

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 04-0399

**Income Tax
For Tax Year 2001**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superceded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Income Tax—Individual

Authority: IC 6-3-2-1; IC 6-8.1-5-1

Taxpayer protests the assessment of individual income tax.

II. Tax Administration—Negligence Penalty

Authority: IC 6-8.1-10-2.1; 45 IAC 15-11-2

Taxpayer protests the imposition of a ten percent negligence penalty.

STATEMENT OF FACTS

Taxpayer is an individual. As the result of an information exchange with the Federal government, the Indiana Department of Revenue ("Department") issued a proposed assessment for individual income tax for 2001. Taxpayer protests the proposed assessment of tax and negligence penalty. Further facts will be supplied as required.

I. Income Tax—Individual

DISCUSSION

Taxpayer protests the imposition of individual income tax. Taxpayer's protest consists of the sentence, "I have received disability social security for many years and have not made enough to file taxes." Taxpayer provides no further explanation or documentation supporting his position.

The Department received information from the Federal government that taxpayer had taxable income for 2001. The Indiana income tax is established in IC 6-3-2-1, which states in relevant part:

(a) Each taxable year, a tax at the rate of three and four-tenths percent []of adjusted gross income is imposed upon the adjusted gross income of every resident person, and on that part of the adjusted gross income derived from sources within Indiana of every nonresident person.

The Department issued a proposed assessment on the income reported by the Federal government.

The Department refers to IC 6-8.1-5-1(b), which explains that the burden of proving an assessment wrong rests with the person against whom the assessment is made. In this case, the taxpayer has not provided any explanation or documentation supporting his protest. Taxpayer has not met the burden of proving the assessment wrong, as required by IC 6-8.1-5-1(b).

FINDING

Taxpayer's protest is denied.

II. Tax Administration—Negligence Penalty

DISCUSSION

The Department issued proposed assessments and the ten percent negligence penalty for the tax year in question. Taxpayer protests the imposition of penalty. The Department refers to IC 6-8.1-10-2.1(a), which states in relevant part:

If a person:

...

(3) incurs, upon examination by the department, a deficiency that is due to negligence;

...

the person is subject to a penalty.

The Department refers to 45 IAC 15-11-2(b), which states:

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence.

Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

45 IAC 15-11-2(c) provides in pertinent part:

The department shall waive the negligence penalty imposed under IC 6-8.1-10-1 if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section.

In this case, taxpayer incurred a deficiency which the Department determined was due to negligence under 45 IAC 15-11-2(b), and so was subject to a penalty under IC 6-8.1-10-2.1(a). Taxpayer has not affirmatively established that his failure to pay the deficiency was due to reasonable cause and not due to negligence, as required by 45 IAC 15-11-2(c).

FINDING

Taxpayer's protest is denied.

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